

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

Shu Feng Xia,  
a/k/a "Kevin,"

*Defendant.*

Shu Feng Xia,

*Petitioner*

v.

United States of America,

*Respondent.*

USDC-SDNY

DOCUMENT

ELECTRONICALLY FILED

DOC #: JAN 15 2015

DATE FILED:

12 Cr. 934 (RA)

14 Civ. 10029 (RA)

**Order re: Attorney-Client Privilege Waiver (Informed Consent)**

WHEREAS Shu Feng Xia has moved for relief from his conviction pursuant to 28 U.S.C. §2255 on the ground of ineffective assistance of counsel; and

WHEREAS the Government, after reviewing the motion papers, has concluded that the testimony of Petitioner's former counsel, Joshua Dratel, Esq. ("Counsel"), will be needed in order to allow the Government to respond to the motion; and

WHEREAS the Court, after reviewing the motion papers, is satisfied that the testimony of Counsel is needed in order to allow the Government to respond to the motion; and

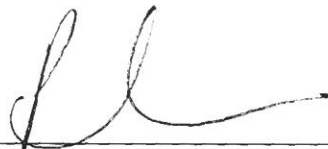
WHEREAS by making the motion, the movant has waived the attorney-client privilege as a matter of law; and

WHEREAS the Court is cognizant that, absent court order or informed consent, ethical concerns may inhibit Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.*, ABA Standing Comm. on Ethics and Prof. Responsibility Formal Op. 10-456 (July 14, 2010), *Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim*,

IT IS HEREBY ORDERED that Counsel shall give sworn testimony, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel made by movant; and it is further

ORDERED that Shu Feng Xia execute and return to this court within 60 days from today's date the accompanying "Attorney-Client Privilege Waiver (Informed Consent)" form. If the document is not received by the court within 60 days from today's date, the court will deny the §2255 motion, on the ground that the movant failed to authorize the disclosure of information needed to permit the Government to respond to the motion.

Dated: New York, New York  
January 15, 2015

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

12 Cr. 934 (RA)

Shu Feng Xia,  
a/k/a "Kevin,"

*Defendant.*

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14 Civ. 10029 (RA)

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**Attorney-Client Privilege Waiver (Informed Consent)**

To: Shu Feng Xia

You have made a motion under Section 2255 of Title 28, United States Code, to have your conviction set aside on the ground that you received ineffective assistance from your former lawyer, Joshua Dratel, Esq. (referred to in this form as "your former attorney"). The court has reviewed your papers and determined that it needs to have a sworn testimonial statement from Counsel in order to evaluate your motion.

By making this motion, you have waived the attorney-client privilege you had with your former attorney to the extent relevant to determining your claim. This means that if you wish to press your claim of ineffective assistance, you cannot keep the communications between yourself and your former attorney a secret—you must allow them to be disclosed to the Government and to the Court pursuant to court order. The court has already issued an Order (copy attached) ordering your former attorney to give such testimony, in the form of an affidavit. This Informed Consent form is designed to ensure that you fully understand and agree to this.

Specifically, if you wish to proceed with your motion to set aside your conviction on the basis that you received ineffective assistance of counsel, you must sign this statement and return it to the court in the attached envelope (keeping a copy for your records). The form constitutes your authorization to your former attorney to disclose confidential communications (1) only in

Commonwealth of Pennsylvania  
County of Clearfield

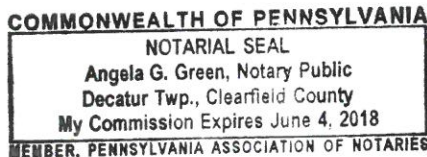
response to a court order and (2) only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by your motion.

You should know that if you sign this authorization, you run the risk that your former attorney will contradict your statements about his or her representation of you. However, you should also know that the court will deny your motion if you do not authorize your former attorney to give an affidavit in response to the Court's attached Order.

You must return this form, signed by you and notarized, within sixty (60) days from the date of the Court's Order directing your former lawyer to give testimony. If the Court does not receive this form, signed by you and notarized, within that time, the court will automatically deny your motion.

## NOTARIZED AUTHORIZATION

I have read the Court's Order dated 01/15/15 and this document headed Attorney-Client Privilege Waiver (Informed Consent). I hereby authorize my former attorney, [name], Esq., to comply with the Court's Order by giving testimony, in the form ordered by the court, relating to my motion to set aside my conviction on the ground of ineffective assistance of counsel. This authorization allows my former attorney to testify only pursuant to court order, and only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by my motion.

Dated: 01/26/2015xia, shu feiySworn to before me this 26<sup>th</sup> day of January, 20 15Angela G. Green  
Notary Public



美国纽约南区法庭

美国政府

刑事案号 12 Cr 934 (RA)

对控

Shu Feng Xia

被告人

外号 Kevin

Shu Feng Xia

申请人

民事案号 14 Civ 10029 (RA)

对控

美国政府

答辩方

有关: 律师与客户保密特权的(认知同意)放弃书

仅当 Shu Feng Xia 是已经根据 <没效用的法律援助> 之声称 (美国法典 28 章 2255 节) 来动议将他的定罪撤消; 而且

仅当 政府在复看过此动议文件之后, 其定论是必需拿到申请人前律师 JOSHUA DRATEL 的见证以后才能容许政府对此动议作出答辩; 而且

仅当 法庭在复看过此动议文件之后, 也是满意必需拿到申请人前律师 JOSHUA DRATEL 的见证以后才能容许政府对此动议作出答辩; 而且

仅当 动议申请人在提出此动议时, 就等于是放弃了法律上律师与客户之间的保密特权; 而且

仅当 法庭认知, 除非有法令或认知同意书的存在, 就算没有保密特权的问题存在, 律师在道义上也许还是有困难将有关前客户的保密资料透露出来; 请参看 ABA 常务委员会的“道德与专业责任意见书” Op. 10-456 (2010 年 7 月 14 日) - <当一位律师的前客户提出没效用的法律援助之声称时向检察官正式透露信息>。

故次, 法庭在此命令律师将以誓章的形式来答辩动议人所提出的 <没效用的法律援助> 之声称;

而且进一步下令 Shu Feng Xia 在六十天之内(60) 签署并寄回附上的 " 律师与客户保密特权的(认知同意)放弃书 " 表格。如果此份文件法庭从今天开算六十天之内(60) 收不到的话, 那法庭就会否绝此 2255 节之动议, 因为动议人失败授权透露有关信息, 好让政府对此动议作出答辩。

日期: 纽约州, 纽约市

2015 年 1 月 15 日

美国联邦地区法官签署

美国纽约南区法庭

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美国政府

刑事案号 12 Cr 934 (RA)

对控

Shu Feng Xia

被告人

外号 Kevin

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Shu Feng Xia

申请人

民事案号 14 Civ 10029 (RA)

对控

美国政府

答辩方

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律师与客户保密特权的(认知同意)放弃书

Shu Feng Xia 先生上:

你是已经根据你前律师 JOSHUA DRATEL <没效用的法律援助> 之声称 (美国法典 28 章 2255 节) 而动议将你的已被定罪身份撤消。法庭已经看阅了你的文件并确定必需你前律师的宣誓证词才能对你的动议作出衡量。

你一旦作出次动议, 为了确定有关你的声称原由, 你就等于是放弃了你与你前律师之间客户的保密特权。这意思就是说: 如果你想追究你 <没效用的法律援助> 之声称, 你就不能保持你与你前律师之间沟通上的保密条件 - 你必须依从法令容许将此等透露出来给政府和法庭。法庭现已经发出法令 (看附件) 命令你的前律师以誓章形式作出此见证。这一份 <认知同意> 表格就是用来确定你是完成明白并同意此做法。

特定来说, 如果你希望继续根据你前律师 JOSHUA DRATEL <没效用的法律援助> 之声称 (美国法典 28 章 2255 节) 来动议将你的已被定罪身份撤消的话, 你就必须在此表证上签名并以回邮信封寄回给法庭 (你自己留底一份)。这表格等于是你授权给你前律师在以下的条件下透露你们沟通上的保密信息: (1) 只是对法庭的法令回应答复上; (2) 只是在有关程度上需要对你 <没效用的法律援助> 之声称作出表态上。

你也必须了解, 如果你签署此授权书, 你所冒的风险就是: 你前律师将会反驳你对他代表你事宜上的声称。但是, 如果你不容许你前律师在回应法令上作证词的话, 那法庭就会否决你的动议。

你必须在法庭指令你前律师提供证词的法令发出之后的六十天之内(60)在公证人面前签署此表格。如果法庭在这时期之内收不到此表格的话, 那么法庭就会自动否决你的动议。

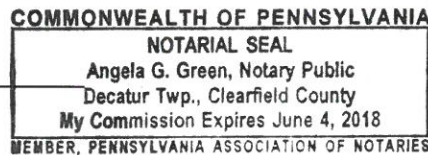
公证授权书

我已经读过了 2015 年 1 月 15 日的法令与 <律师与客户保密特权的 (认知同意) 放弃书>。我在此授权给我前律师 JOSHUA DRATEL 在我 <没效用的法律援助> 来将我的已被定罪身份撤消之动议上依从法令提供证词。此授权书只容许我前律师对法庭的法令回应答复上和在有有关程度上需要对我所提出 <没效用的法律援助> 之声称作出表态上提供证词。

日期 01/26/2015 Xia Shu Feng

在 年 月 日在我面前宣誓签定

Angela G. Green  
公证人名字



Sworn to and subscribed before me  
this 26th day of January 2015